IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CIVIL APPLICATION NO.25 OF 2004
IN
REVIEW PETITION (STAMP) NO.12153 OF 2004
IN
CIVIL REVISION APPLICATION NO.1373 OF 2002
WITH
REVIEW PETITION (STAMP) NO.12153 OF 2004
IN
CIVIL REVISION APPLICATION NO.1373 OF 2002

Ramesh Krishna Shanbhag .... Applicant/ Petitioner

Vs.

Kunda Bhalchandra Ashtekar .... Respondent

Sarvasri I.M. Khardi i/b Vineet B. Naik for the Petitioner.

Shri A.M. Kulkarni for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: JUNE 06, 2006

P.C:

1. Heard the learned Advocates for the parties. The application for condonation of delay pertains to 543 days of delay in preferring the review petition. The petition for review relates to the order dated 20-8-2002 passed in Civil Revision Application No.1373 of 2002. The grounds for review are the events which have occurred subsequent to the passing of the said order dated 20-8-2002 and further observations in that regard in the order of 24-9-2003 in Writ Petition No.5427 of 2003.

2. Few facts relevant for the decision are that the applicant preferred application to carry out certain repairs to the suit premises. The said application was rejected by the trial Court on 6-7-2001 and which was sought to be challenged in Civil Revision Application No.1142 of 2001. The learned single Judge of this Court while setting aside the order of the trial Court held that the repairs which are described under Item Nos.A, B, and D of paragraph 6 of the application which was filed by the applicant in the trial Court needs to be allowed and the repairs to be carried out. After those repairs were carried out, the applicant moved yet another application before the trial Court on 15-1-2002 for some further repairs claiming the same to be consequential and necessary repairs. The said application was rejected by the trial Court on 20-2-2002, which order was carried in Civil Revision Application No.699 of 2002 by the respondent. This Court by order dated 5-4-2002 set aside the order of the trial Court and directed the trial Court to reconsider the application afresh in the light of the observations made by this Court in its order and to permit the repairs which can be said to be consequential to the permission already granted. On remand of the matter, the trial Court after hearing the parties partly allowed the application permitting the works relating to

electrical installations and plumbing works as well as plastering of the wall while rejecting the other prayers in the application. The said order was passed on 5-7-2002. The said order to the extent it rejected the relief prayed for was sought to be challenged by the applicant before this Court in Civil Revision Application No.1374 of 2002. As regards the order to the extent it allowed the repairs, the same was challenged by the respondent in Civil Revision Application No.1373 of 2002. Both the revision applications were disposed of by this Court by order dated 20-8-2002 by permitting only the consequential repairs and rejecting the repairs which cannot be said to be consequential to the original permission granted. The applicant again moved a fresh application on 20-1-2003 seeking various repairs including the fixation of railing and grills to the staircase and the mezzanine floor on the ground that the same is absolutely necessary for safety reasons as well as for due compliance of the directions issued by the Municipal Corporation in that regard. The same was objected to and the trial Court rejected the same by its order dated 25-3-2003. The matter was again brought before this Court in Writ Petition No.5427 of 2003 by the applicant. This Court by its order dated 24-9-2003 dismissed the said petition while observing that the proper course for the applicant is to seek review of the order of

20-8-2002 in Civil Revision Application No.1373 of 2002. It is in these circumstances that the present petition has been filed. However, the same has been filed after about 543 days from the date of passing of the order dated 20-8-2002 and about 176 days from the date of passing of the order dated 24-9-2003. The reason for the delay has been disclosed as procedural hazards suffered by the applicant in the matter of filing of the review petition.

3. Irrespective of whether there is any justification for condonation of delay or not, fact remains that review of the order dated 20-8-2002 has been sought solely on the ground that on account of the events which have occurred subsequent to the passing of the said order, there requires further repairs to the premises and on that count the order needs to be reviewed. The ground on which the review is sought for is itself sufficient to reject the application for review. In order to enable a party to seek a review of the order, the error must be apparent on the face of the record or for sufficient similar reasons the Court can invoke the review powers and not otherwise. Obviously therefore, the reasons must be either apparent on the face of the record or it must be in relation to the events which have occurred prior to the date of passing of the order sought to be reviewed. Subsequent events cannot be a

justification for review of the order. Besides, review can never be granted on a ground which is totally foreign to the subject-matter which was discussed and decided by the order sought to be reviewed. In the case in hand, the order of 20-8-2002 was passed on the ground that the repairs can be permitted to the extent which were consequential to the permission already granted as the application which was filed by the applicant in the trial Court was on the ground that the repairs which were necessary were consequential to the permission granted and not the repairs being required on any other ground. The application in question which has been disposed of by the order passed by the trial Court on 25-3-2003 relates to the repairs which are stated to have been required on account of safety reasons and the notice issued by the Kolhapur Municipal Corporation. Undisputedly, the notice by the Kolhapur Municipal Corporation was issued on 26-5-2003, much after the order dated 20-8-2002. Besides, the subject-matter of the application which was disposed of by the trial Court under the order dated 25-3-2003 was not the same which related to the order passed on 20-8-2002 by this Court. Being so, the question of review of the order dated 20-8-2002 on the ground alleged does not arise and for the same reason the question of condonation of delay to file such a review petition does not arise.

4. For the reasons stated above, therefore, the applications for condonation of delay and for the review are rejected.

(R.M.S.Khandeparkar, J.)

sjs/66cag25.4